

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16463



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In the Matter of

AEGIS CAPITAL, LLC, CIRCLE ONE
WEALTH MANAGEMENT, LLC,
DIANE W. LAMM,
STRATEGIC CONSULTING
ADVISORS, LLC and
DAVID I. OSUNKWO

Respondents.

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RESPONDENT DAVID I. OSUNKWO'S PRE-HEARING BRIEF

Respondent David I. Osunkwo ("Osunkwo" or the "Respondent") hereby submits the following as his pre-hearing brief.

I. INTRODUCTION

The Division's claims regarding Osunkwo and Strategic Consulting Advisors, LLC ("Strategic Consulting" or "SC" or "Compliance Consultants") concern the assets under management ("AUM") listed in the Form ADV filings of Aegis and Circle One filed in 2010 and 2011 respectively. The Division has indicated that it believes Osunkwo and Strategic Consulting contributed to or caused the errors Aegis and Circle One made in calculating their AUM and the number of accounts which the officers of the firm provided to Osunkwo and Strategic Consulting for purposes of filling out and filing the firms' Form ADV's. Yet, Aegis' and Circle One's management and officers must or should have known the figures they supplied were inconsistent with the advisory services the firm was actually providing to its clients based on their operation of the firm's advisory business. Moreover, the Form ADV's were reviewed and approved/signed-off in March 2010 by

Dianne Lamm ("Lamm") in her capacity as Chief Operating Officer and principal of the firm, and then by Eric Blau ("Blau") in March 2011 in his capacity as Chief Investment Officer and Principal after he coordinated the firm's review of its AUM, which AUM and number of accounts figures he provided to Osunkwo for purposes of filling out and filing the March 2011 ADV, and after Blau in consultation with Lamm provided firm management approval/sign-off. Indeed, as set forth herein, Lamm certified that she had personally verified the firm's AUM in 2009 in connection with the acquisition of the firm. In these contexts, and as discussed more fully herein, Respondent believes that the evidence to be adduced at hearing does not justify the claims of the Division against Osunkwo and Strategic Consulting, much less the consequences of holding a Chief Compliance Officer ("CCO") liable or responsible in circumstances where, as here, there is no evidence such CCO either knew of or was complicit in the violation allegedly committed by Aegis and Circle One, Lamm and Blau, to whom such CCO directly reported and upon whom he reasonably relied for the AUM and number of accounts figures contained in the firm's Form ADVs in issue.

The Division is seeking to impose a theory of liability regarding supervisory or managing managers that directly contradicts and undercuts longstanding and clear Commission precedent that managers, including Lamm, Blau and John Lakian ("Lakian"), had duty as firm management and principals to make sure Form ADV was timely and accurately filed regardless of who was signing and firm management cannot abdicate that responsibility to the CCO simply by saying they delegated it to the CCO with no oversight. The CCO has no duty as a matter of law under Rule 206(4)-7 to file Form ADV, nor do the governing compliance consulting contracts or other facts at issue reflect that the CCO acquired a duty to independently verify ADV information without input or assistance from firm management who had access to and control over such ADV information. As CCO, Osunkwo was entitled to rely on others in firm management and did so and was given information by Blau for filing Form ADV. To the extent the Division's complaint is predicated on the notion that Osunkwo/Strategic Consulting caused Circle One's and Aegis Capital's violations, without oversight responsibility from management (Blau, Lamm and Lakian) does not comport with well-established Commission precedent.

It is a widely held principle that "ultimately the responsibility for a broker-dealer's

compliance resides with its chief executive officer and senior management." (Frequently Asked Questions about Liability of Compliance and Legal Personnel at Broker-Dealers under Sections 15(b)(4) and 15(b)(6) of the Exchange Act, by the Division of Trading and Markets (September 30, 2013), quoting *Sheldon v. SEC*, 45 F.3d 1515, 1517 (11th Cir. 1995) ("The president of a corporate broker-dealer is responsible for compliance with all of the requirements imposed on his firm unless and until he reasonably delegates particular functions to another person in that firm, and neither knows nor has reason to know that such person's performance is deficient."), quoting *Universal Heritage Investments Corp.*, 47 S.E.C. 839, 845 (1982) (finding securities firm's president had properly delegated duties).) The same is true for RIAs and other registered entities. As recently as April 2016, when the Commission adopted a new rule requiring CCOs for Security-Based Swap Dealers, which role was "designed to be generally consistent with the current compliance obligations applicable to CCOs of other Commission-regulated entities," including RIAs, the Commission emphatically responded to industry concerns that the language in its proposing release could make COOs liable for compliance or supervisory failures. In reassuring the commenters that this is not the intent of the Commission at all, it repeated the following assertion three times. "[t]he Commission agrees with a commenter that it is the responsibility of the SBS Entity, not the ceo in his or her personal capacity, to establish and enforce required policies and procedures." The Commission further noted that **"the CCO cannot be a guarantor of the SBS Entity's conduct."** (Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Final Rule, Rel. No. 34-77617 (April 14, 2016; emphasis added) ("Business Conduct Standards Release"), p. 391 and n. 1196 and pgs. 398, 400, 401, 405.)

Additionally, there were no red flags either in the Form ADV information provided by Blau that would have put Osunkwo on notice that something was wrong with the numbers or information, and Osunkwo reasonably relied upon such information as well as his prior due diligence of such information as part of his preparing the March 2010 ADV with Lamm. Accordingly, Osunkwo is not a cause of the firm's violation.

The responsibility for filing Form ADV remains with the firm and firm management as they have and retain responsibility for authorizing or approving such filing under ADV

instructions and SEC standards. And while an RIA firm may certainly outsource or use different third-party service providers, the SEC has been very clear that RIA firms and their management cannot outsource the responsibility and still retain that responsibility. As noted in ADV express instructions, a management person (familiar with the affairs and business of the RIA) is required as to signatory and neither Osunkwo/SC was an employee of any of the RIAs or eligible to be signatory. To further clarify, Osunkwo/SC was not engaged as a "filing service" or "service bureau" for IARD filings of which there are/were compliance or regulatory consulting firms that offer and provide that kind of service (and the SEC used to maintain a list in prior years of such "IARD filing service bureaus"). It was to assist and support firm management who have to provide us information to prepare and then have management approve/signoff on the ADV filing by authorizing Osunkwo/SC to file on behalf of management. In fact, the Commission and its Investment Management Division in its prior guide to IARD E-Filings and usage of regulatory and compliance consultant "filing service bureaus" – which consist of regulatory-compliance consultants, consulting firms and law firms – expressly notes the following as a reminder and disclaimer for investment advisers that use such "compliance and regulatory service bureaus":

Remember: Electing to use a service bureau does not relieve an investment adviser of its legal and regulatory responsibilities under the federal securities laws, including the timely submission of complete and accurate filings.

(SEC-Division of Investment Management, *Electronic Filing for Investment Advisers on IARD – List of Service Bureaus for IARD Filings*, available at www.sec.gov/divisions/investment/iard.shtml as of Dec. 2008 (last viewed))

Regarding appropriate authorization from Blau for his signature is at worst inadvertent given timing and insistent pressure from Blau and Lamm to get Circle One's Form ADV on file without any direction from management as to who was supposed or going to sign, but in any event, the evidence will show Blau was provided with the ADV filing with his name on it in multiple spots and said nothing. In other words, firm management either failed to give Osunkwo explicit instruction as to who should or would sign and/or Osunkwo reasonably relied upon his direct report relationship with Blau in putting his name down given that he was the manager or supervisor with whom Osunkwo corresponded and relied upon for preparation of ADV as was explicitly agreed by Blau with Osunkwo/Strategic Consulting at the start of March 2011.

As for Aegis Capital not filing its ADV in March 2011, it was not required as per the SEC's 1992 guidance release where one registered investment adviser entity is taking over or merging with another registered investment adviser entity. Aegis had no obligation to file its Form ADV pursuant to Rule 204-1(a)(1) once Circle One claimed all its assets in connection with the acquisition and subsequent internal merger-consolidation reorganization into Circle One. But rather, as the SEC's 1992 guidance indicated, Aegis was instead required to file a Form ADV-W which Aegis Management—Lakian, Lamm and Blau—repeatedly delayed or withheld filing despite Osunkwo/Strategic Consulting having prepared it and directing and reminding Aegis Management to file such ADV-W. But firm management, Lamm and Blau as Osunkwo's direct report, made the decision along with Lakian as the Firm Management group to withhold or defer management approval/signoff on the ADV-W that Osunkwo prepared (in compliance with the ADV-W instructions) ostensibly because, as they indicated, of outside litigation counsel's advice not to de-register Aegis Capital given the litigation being commenced and then subsequently pending against K. Zaramba (former head of Aegis' New Hampshire branch office) by Capital L/Aegis Capital. Neither Mr. Osunkwo nor SC was eligible nor authorized to file Aegis Capital's ADV-W which firm management had directed to be prepared to de-register Aegis Capital as per the 1992 SEC guidance.

Finally, the Steadman factors when applied indicate that no sanction is justified or warranted under these facts in any event where firm management appears to have abdicated and/or attempted to avoid any responsibility for filing the firm's Form ADV and failed to supervise Osunkwo. In determining sanctions, the Commission must first consider such factors as:

the egregiousness of the [respondent's] actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future violations, the [respondent's] recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities for future violations.

(*Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978))).

These Steadman factors which must be considered in determining sanctions, do not compel punishment in this matter. For the reasons set forth herein, Respondent submits that the Division's claims are not justified by the facts or law.

II. FACTUAL BACKGROUND & UNDERLYING CIRCUMSTANCES

Evidence at the hearing will show the following as set forth in this section II herein. The circumstances surrounding the discovery of the overstatements contained in Circle One's March 2011 ADV explain that the assumptions underlying both that filing and the previous Aegis March 2010 ADV were at best latent and not apparent to Osunkwo or Strategic Consulting previously and at worst should have been obvious to Lamm and Blau who had access to and control of the underlying information and data in the first instance. The testimony and emails exchanged by and among Aegis' senior management group of Blau, Lamm, and Lakian, Chief Investment Officer Blau, Operations Director Robertson and Osunkwo reinforce that Osunkwo reasonably relied on information provided to him by firm management and staff for the Circle One AUM calculations for its 2010 Form ADV.

After relying upon Lamm for purposes of Aegis' March 2010 filing, Lamm designated Blau, Aegis's Principal, Chief Investment Officer as well as "control person" (as listed on Aegis' and Circle One's Form ADV from 2009-2011), to serve as the direct contact person for Osunkwo and Strategic Consulting for coordinating the day-to-day work process and provision of information to Osunkwo, which included not only compliance and operations initiatives, but culminated in the filing of the Circle One March 2011 ADV. In that regard, Osunkwo obtained the AUM and number of accounts figures he used in the March 2011 Form ADV directly from Blau as part of Blau's gathering information for Osunkwo in line with Blau's express written commitment and pledge in early March 2011 to get the Circle One Form ADV filed "quickly and accurately." As the designated senior firm management officer handling this matter and as Osunkwo's direct management report and supervisor on this ADV matter for these 2 merged and consolidated RIA firms owned by Capital L, the extent of Blau's responsibility for obtaining the combined Circle One and Aegis AUM figures as well as the process he used in obtaining that information is clear from meetings, conversations, telephone calls, and emails by and among Blau, Lakian, Lamm, and Osunkwo and Strategic Consulting from January 2011 through early April 2011. Together, this information clearly illustrates that Osunkwo and Strategic Consulting were reasonable in relying upon Blau, who in turn relied upon the Operations Director, Robertson, to provide him with the information that Blau gave to Osunkwo and Strategic Consulting. In this respect, it is significant to note that Osunkwo would have been unable to obtain a different AUM number than the one passed onto to him by Mr. Blau even if Osunkwo had undertaken to contact the Operations department

directly. Mr. Blau was a senior management staff with far reaching clout in the organization, therefore, there was no reason in Osunkwo's mind to question the authenticity of the AUM number Blau provided as he routinely provided Mr. Osunkwo with various other instructions, information and directions regarding the registrant and its affiliates.

Moreover, it was not until months after March 2011 filing of the 2010 Circle One Form ADV, including the AUM figures provided by Blau and Robertson to Osunkwo, that Robertson testified that he learned of errors in the calculation of the AUM figures. In combination, therefore, Osunkwo was not aware of concerns with regard to the AUM figures provided to him by Blau or Robertson at the time of the 2011 Circle One Form ADV filing. Nor did Blau raise any concerns, questions or discrepancies in any of the Circle One Form ADV items listed in its 2 parts regarding firm AUM, number of accounts, or Blau's senior officer/management, board of director, and "control person" roles as reflected in such Form ADV as provided to Blau during the week of these ADV filings in the period April 1-6, 2011 as follows:

Circle One Form ADV Items – Firm AUM and Number of Accounts as provided by Blau

1) ADV-Part 1 / Item 5.F – Assets Under Management

	U.S. Dollar Amount	Total Number of Accounts
Discretionary:	(a) \$ 132000000 .00	(d) 1179
Non-Discretionary:	(b) \$ 50000000 .00	(e) 110
Total:	(c) \$ 182000000 .00	(f) 1289

2) ADV-Part 1 / Schedule D-Item 7.B – Managed/Affiliated Private Funds & Funds AUM

You must complete a separate Schedule D Page 4 for each limited partnership in which you or a related person is a general partner, each limited liability company for which you or a related person is a manager, and each other private fund that you advise.

- **AEGIS CAPITAL FUND, LLC / \$ 28,000,000**
- **AEGIS DIVERSIFIED REAL ESTATE FUND, LLC / \$ 1,400,000**
- **AEGIS SPECIAL OPPORTUNITIES FUND, LLC / \$ 375,000**
- **AEGIS MANAGED FUTURES FUND, LLC / \$ 4,700,000**

3) ADV-Part 2(2A) Disclosure Brochure / Item 4 – Total Assets Under Management/AUM

Assets Under Management/AUM

As of March 31, 2011, Circle One managed **approximately \$182 million in total AUM consisting of approximately \$132 million in discretionary AUM and approximately \$50 million in non-discretionary AUM.**

Circle One Form ADV Items – Titles/Roles as reflected for Blau in ADV's provided to him

4) ADV-Part 1 / Schedule A – Management, Executive Officers, Directors and Ownership

BLAU, ERIC, CHARLES / PRESIDENT & CHIEF INVESTMENT OFFICER

and CONTROL PERSON-YES / Title-Roles Status – Since 12/2009

- 5) ADV-Part 1 / Execution & E-Signatory Page

Signature/Name - ERIC C. BLAU / Title – PRESIDENT & CHIEF INVESTMENT OFFICER / 03/31/2011

- 6) ADV-Part 2(2B) Disclosure Brochure-Supplement / Biography of Eric Blau

ERIC CHARLES BLAU

Director and Chief Investment Officer – 5/2009 to Present

Born: January 8, 1969 Educational Background

Mr. Blau earned his M.B.A. from Duke University in 1997 with a concentration in finance and his B.S. in mechanical engineering from the Massachusetts Institute of Technology in 1991 with a concentration in international business

Business Background May 2009 – Present, Chief Investment Officer, Aegis Capital, LLC & Aegis Funds Management, LLC February 1998– May 2009, Wachovia Securities, LLC.

In early April and subsequently, Blau's responses to Osunkwo/Strategic Consulting, on behalf of senior management of Capital L and merged-consolidated Circle One and Aegis Capital RIA firms, to these Osunkwo/Strategic Consulting's email exchanges, communications and related materials was in sum and substance: Thank you and job well done as we agreed beforehand. At no time during this 1st week of April 2011 upon being provided with copies of the updated Circle One March 2011 Form ADV or afterwards up until the SEC's routine examination in August-September of 2011, did Blau inform Osunkwo or Strategic Consulting of any mistakes, inaccuracies or overstatements in any of the information in such Form ADV regarding AUM and number of accounts as provided by Blau, nor did Blau raise any questions, issues or inaccuracies with his various management, officer, control person and director roles as listed in this Form ADV in both parts. Thereby, Blau, as firm management's representative handling and supervising this matter, by his silence and failure to raise any issue or problem by firm senior management with this Form ADV's AUM and accounts data (as provided by Blau) and/or Blau's own listed titles/roles further re-confirmed and ratified both parts of this Form ADV as initially filed at Blau's and Lamm's direction and repeated insistence in early April 2011.

On related note during the period of finalizing the merged-consolidated Circle One Form ADV for an end of March 2011 filing, the SEC-Atlanta Office and its Enforcement Division communicated its

decision to close a then-pending SEC formal investigation of Aegis Capital with no enforcement action to Capital L/Aegis' outside counsel K&L Gates Law Firm. The SEC-Atlanta Office determined not to initiate an enforcement action based on its July 2009 deficiency letters to Aegis Capital and Aegis Funds Management and the related enforcement referral and subsequent investigative review, as evidenced by the "no further action" enforcement investigation closing letters sent to both Aegis Capital and Aegis Funds Management dated March 29, 2011. Such SEC-Atlanta Office enforcement formal investigation closing letters provided additional comfort and confirmation to Osunkwo/Strategic Consulting along with Blau and firm management that there were no issues or concerns with Aegis Capital's prior Form ADV particularly with respect to the AUM numbers which formed the basis of numbers used in or the soon to be filed new Form ADV for the newly merged-consolidated Circle One and Aegis Capital investment advisory firms.

A. Discovery of Overstatements Contained in Circle One's 2011 Form ADV

Beginning in or about August 2011, Aegis and Circle One received a request letter from the SEC Examination Staff ("Staff") in respect of the examination of Aegis and Circle One. The requested information included the RIAs Form ADVs for 2010 and 2011. Osunkwo, as CCO, assisted the registrants with collecting, reviewing and providing the materials responsive to the Staff. Shortly thereafter, the Staff initiated an on-site examination during which it requested additional detailed information regarding Circle One's and Aegis' assets under management for ADV dated March 31, 2011, including details and backup. In preparing responses to those requests, Osunkwo collected information from various sections of the firms, including the Operations Department and Blau, Aegis' Chief Investment Officer and Osunkwo's primary contact on the executive management side of Aegis. Although Aegis' analysis of the figures for the AUM supporting the Form ADV went through a few iterations to the Staff, ultimately Osunkwo produced a spreadsheet prepared by Blau, on or about September 30, 2011, which provided the final analysis of Circle One's overstatement of its AUM for the 2011 Form ADV. Whereas in its March 31, 2011 filing, Circle One (which included Aegis by that time) had listed its AUM as \$182,000,000, based on information Blau provided Osunkwo in March 2011, the spreadsheet clarified that this overstated AUM by as much as \$119,137,729.72, so that the correct AUM figure as of December 31, 2010 (not including private funds) was \$62,862,270.28. Given the dramatic change, Osunkwo inquired of Blau as to the basis for the numbers he had previously supplied. Osunkwo learned for the first time that Circle One had incorrectly calculated its AUM by including (1) assets of "clients" with respect to whom Aegis personnel had solicitation arrangements but whose assets were not being supervised or in any way

enjoyed an investment management relationship with Aegis/Circle One; (2) assets in brokerage accounts over which Aegis' personnel were being remunerated by way of commissions from affiliated and unaffiliated broker-dealers, but over which Aegis did not exercise any investment management responsibilities, i.e., it had no investment management agreement with many of the accounts that it had attributed to Aegis and Circle One. In sum, it appeared that Aegis and Circle One had mistakenly assumed that customer accounts for which its IARs were either the Registered Representative or solicitation agent should be included within AUM. In light of this defect in Aegis' approach to calculating AUM, even the Form ADV for March 31, 2009 with respect to Aegis' assets as of December 2008 may have been based upon the same erroneous assumptions, which was filed more than a year before Osunkwo's involvement with Aegis. As part of the Staff's examination, it also sought information regarding Circle One's AUM as of July 2011, which was also included in the September 30, 2011 spreadsheet as \$4,222,081.36 (not including private funds managed within the complex). Notwithstanding the substantial overstatement with regard to the December 31, 2010 AUM figure for Circle One, the July 31, 2011 figure of \$4MM actually appeared to be justifiable given the departure of a Circle One IAR from the New Hampshire office in April 2011 who took with her close to \$60MM in AUM. Subsequently, Osunkwo directed that all investment management agreements needed to be provided to him in hard copy for review by him. Based on Osunkwo's review of that information, he confirmed that Aegis had misunderstood the proper criteria for calculating AUM. It now appeared to Osunkwo, as he testified, that Aegis had overstated not only the AUM listed in the ADV for December 31, 2010 (filed March 2011), but also December 31, 2009 (filed March 2010). As reflected in the Division's investigation of this matter and testimony adduced therewith, there is no evidence that at any time prior to this discovery by Osunkwo in or about August 2011 that he (or anyone at Aegis or Circle One) knew of the assumption underlying Aegis / Circle One's calculation of AUM much less that it came to Osunkwo's attention in the ordinary course of his duties as Chief Compliance Officer since March 2010. To the extent the same misunderstanding underlies AUM numbers listed in ADVs for years prior to Osunkwo's arrival in 2010, we note that the SEC's 2009 audit of Aegis did not raise any deficiency with respect to Aegis' AUM calculation. Indeed, Lamm, Aegis Chief Operating Officer, testified to the Staff that she had conducted a thorough due diligence of Aegis's 2009 AUM prior to the acquisition of a controlling interest in Aegis by a group that included her and John Lakian ("Lakian"), subsequent Chairman of Aegis. In particular she admitted she reviewed the assets under management and found that "the assets under management were - number was correct" and that "what he [former Aegis Owner Alan Darby] had was absolutely the AUM, I could verify that

through account statements from Schwab and Fidelity.” [Lamm Testimony, p. 78 starting at line 22]. She further testified that besides some questions concerning an IAR in Tampa Florida, she was able to verify that the assets under management (AUM) for Aegis was properly stated. [Id. at pp. 78-79]. Moreover, the ADV for Aegis in 2009 had approximately \$100MM of assets under management. Thus, as discussed further herein, Lamm, in her role as COO and acting-CCO prior to Osunkwo, was responsible for knowing and did verify the AUM and other account details that were inserted in the ADV as part of the March 31, 2010 filing.

B. Throughout 2010 Capital L Group (formerly Aegis Advisor Alliance) Acquires and Consolidates Its Registered Investment Advisory Firms Holdings

The organizational dynamics of Aegis and Circle One put into context whom Osunkwo reported to and reasonably relied upon for purposes of preparing the Form ADVs for Aegis and Circle One, including Lamm and Blau. As of the first quarter of 2010, Aegis Advisor Alliance was owned principally by Pangea Capital Management, Lakian and Lamm. It operated as an RIA “aggregator platform” (an “aggregator platform” is typically one in which multiple RIA are under a holding company structure and RIAs may have shared services arrangements) having acquired a few RIA firms, including Aegis and its affiliated Aegis Funds in the fourth quarter of 2009, then RIA Hunter Advisors later in 2009, RIA Centermark Capital in the first quarter of 2010 and RIA Harmony Investments in the latter part of the first quarter of 2010. RIAs Hunter and Centermark operations were folded into RIA Aegis prior to the end of the first quarter of 2010. Also, during this quarter, Aegis Advisor Alliance changed its name to Capital L Group, and over the next year and half, Capital L also acquired controlling ownership interests in two other RIAs along with two broker-dealer firms. Capital L was in the business of, among other things, acquiring registered investment advisers (“RIAs”), and it owned Aegis prior to its retention of Strategic Consulting and acquired a number of RIAs during the period at issue in this administrative proceeding. Some of those RIAs were absorbed by Aegis, others were kept as separate entities under the Capital L corporate parent umbrella. Capital L acquired Circle One which had been a separately operated RIA, and during the first quarter of 2011, Capital L management decided to merge and consolidate Circle One and Aegis into a single RIA and operate under the Circle One name. The directive on this was passed on to Osunkwo and the staff by Mr. Blau in his capacity as the on-site management executive who directed affairs on a day-to-day basis in the absence of Lakian and Lamm both of whom, in 2011 appeared to have begun to focus on other matters.

The Capital L corporate entities’ organizational structure is reflected in the Capital L Group

Organizational Entities Chart in mid-2011. As reflected therein, Aegis was merged and consolidated with and into and became the renamed Circle One Wealth Management (“Circle One”) by its common corporate parent Capital L and its management team as described below. For purposes of the Form ADV’s at issue, therefore, we are discussing Aegis Capital for the March 2010 Form ADV filing of Aegis and Circle One for the March 2011 Form ADV filing of Circle One as reorganized post merger-consolidation, which included Aegis Capital.

C. Capital L Reorganizes Its Management Installing Lakian and Lamm As Managing Principals And Blau as Chief Investment Officer

During the early part of the first quarter of 2010, while under the holding company umbrella of Capital L Group, Aegis and Aegis Funds Management-Aegis Funds (collectively referred to as “Aegis Group”) restructured its current management as former management exited. Former majority-owner, CEO and president Allen Darby and former Chief Operating Officer and Chief Compliance Officer Wes Norton separated from Aegis Group in the December 2009 to end of January 2010 period. A new Capital L and Aegis Group executive management team was put into place consisting of the following three senior executives: 1) Lakian as Chairman-Director and Managing Member replacing Alan Darby; 2) Lamm as Chief Operating Officer and “Interim Chief Compliance Officer” replacing former CCO Norton since the now vacant CCO position reported up to the Chief Operating Officer; and 3) Blau as Lead Portfolio Manager and Chief Investment Officer of Aegis Group, including the private investment funds. (See K&L Gates Feb. 2010 Letter (draft) to SEC-Atlanta Office Senior Counsel Penny Morgan regarding In the Matter of Aegis Capital, LLC Formal Investigation.)

According to Aegis’ February 2010 letter to the SEC-Atlanta Office in response to a 2009 audit deficiency letter, Aegis disclosed the following regarding its internal reporting and operational structure at that time:

- Lakian was responsible for formulating and directing Aegis’s strategic pursuits, growth and the management restructuring following on the various acquisitions;
- Lamm as Chief Operating Officer of Aegis reported directly to Lakian, generally oversaw operations, reinforced Aegis’ financial and organizational framework and internal controls, working with third party vendors and was responsible for implementing significant enhancements to its automated platform and technology resources and was involved in employment and staffing matters; and
- Blau became lead portfolio manager of the private funds portfolio of Aegis and Chief Investment

Officer. In this capacity, he was responsible for managing the assets of the private funds, performed due diligence on prospective and existing private fund investments. Blau also was the primary contact with Aegis' fund administrator for the private funds as well as valuing the assets of the underlying funds in which the private funds were invested.

An organizational chart was provided to Osunkwo upon meeting Aegis in February 2010, a copy of which is attached as Exhibit C, which set out additional organizational detail relative to other personnel at Aegis. In particular, it was disclosed there that the Chief Compliance Officer (CCO) would report to Lamm as COO. Although not reflected in that chart, Les Robertson ("Robertson") was hired in or about January 2010 as Director of Operations reporting to Lamm, and with administrative and other finance personnel reporting to him. Robertson had control and access to Aegis' customer account data custodied with Schwab and Fidelity, which as described below formed the basis of the AUM calculations.

D. February 2010 Osunkwo and Strategic Consulting Are Engaged By Aegis To Assist With Compliance

Beginning in January 2010, Lamm contacted Strategic Consulting about Aegis' needs for additional compliance assistance. At that time, Lamm advised that Aegis' previous CCO (Norton) had vacated the position and that she was acting-CCO. She explained she needed assistance with a number of matters including an ongoing SEC exam. In February 2010, an initial engagement letter was executed by Lamm for Aegis to retain Strategic Consulting for this limited purpose, specifically to familiarize themselves with their previous regulatory filings (not to audit them), advise on the SEC 2009 exam response letters, review their production to the SEC in connection with the exam and then to assist with preparing a draft ADV annual update. In connection with these tasks, Aegis provided Strategic Consulting with the following information, among other materials:

- The November 4, 2009 Interim Update to Form ADV for Aegis (post-acquisition of Hunter) (Exhibit D);
- July 1, 2009 SEC exam deficiency letter directed to Aegis Group concerning its affiliate Aegis Funds Management, manager to certain private funds (Exhibit E); and
- Aegis Group's responses to the deficiency letter from its outside counsel K&L Gates of August 2009 and February 2010 (Exhibit F).

According to the November 4, 2009 Interim Form ADV for Aegis, Aegis' AUM as of that time was reported as \$100 million. Further, the July 2009 SEC exam deficiency letter was focused heavily upon Aegis Fund Management, a private funds manager affiliate of Aegis. In addition, issues were raised regarding Aegis's books and records concerning retention of email, code of ethics and insider

trading policy, and the overall financial condition of Aegis and its affiliate. In response to these alleged deficiencies, in August 2009 K&L Gates on behalf of Aegis pointed out that much of the Staff's concerns were directed at Aegis' advisory affiliate, not Aegis, and otherwise explained various corrective actions taken to address concerns raised by the Staff. It does not appear that the July 2009 deficiency letter or the August 2009 response from K&L Gates raised issues regarding the manner in which Aegis calculated its AUM or the assumptions underlying its calculation that ultimately led to the restatement in 2011. Subsequent to Pangea's acquisition of Aegis in late 2009, Aegis provided a supplemental response to the deficiency letter in February 2010, to which Strategic Consulting provided comments describing its role along with Osunkwo as compliance support to Aegis including Osunkwo's anticipated role as CCO. The calculation of Aegis' AUM for 2009 (or any other period) was not brought to the attention of Strategic Consulting or Osunkwo's at this time.

E. March 2010 Osunkwo is Appointed as CCO of Aegis and Relies Upon Lamm as COO With Responsibility Over Operational and Financial Controls and Regulatory Matters to Provide Him with the Requisite Information to File the 2010 Form ADV For Aegis, For Which Lamm is the Signatory

On or about March 2, 2010 Strategic Consulting executed a compliance consulting agreement pursuant to which Strategic Consulting provided Osunkwo's services to Aegis as CCO. Strategic Consulting provided compliance support to Osunkwo pursuant to the terms of that engagement, which included two additional compliance consultants (one consultant-counsel supporting Osunkwo on the RIA side and the second consultant-counsel assisting Osunkwo on private fund issues). As of March 8, 2010, Osunkwo officially began as CCO. Thereafter, between March 8, 2010 and March 31, 2010, Osunkwo and a Strategic Consulting principal communicated directly with Lamm with regard to preparation of the Form ADV. These communications established clearly that (i) Lamm was fully informed as to the instructions for Form ADV and that she would be signatory, (ii) Lamm, Lakian and others at Aegis were cautioned to be careful in preparing the Form ADV and given further instructions and every opportunity to ask questions about the information needed to prepare it, (iii) Osunkwo had repeated communications with Lamm explaining to her details about what can and cannot be included in the AUM with regard to the Harmony acquisition, which Osunkwo convinced her not to include; and (iv) that Lamm had established a new process for reconciliation among her operations group in providing the AUM figures to Osunkwo at a meeting on March 30, which she would explain to him later, showing Lamm was in charge of calculating

and reconciling the AUM.

The Compliance Consultants actively worked to assist Aegis and New Circle One in preparing accurate AUM for their Forms ADV Part 1. These efforts are demonstrated by a series of actions they commenced immediately after being retained and continued throughout the period of Strategic Consulting's compliance engagement. Within the first few weeks after being engaged in March 2010, both Osunkwo and Strategic Consulting exerted efforts to educate Aegis principals about the impact of business combinations on the calculation of AUM for purposes of the Form ADV. In the course of ongoing communications with Ms. Lamm, some of which were oral, others by email, Strategic Consulting sent Ms. Lamm the complete excerpt from Instruction 5.b. from the SEC's Instructions on how AUM must be calculated for purposes of the Item 5(f) of Form ADV Part 1. A few days later, in connection with a pending acquisition for which Aegis was eager to demonstrate how high Aegis's AUM had grown, on March 14, 2010, Osunkwo urged Lamm and Brian Church, another officer of Aegis, to exercise caution rather than to submit a hasty ADV filing which would include the assets managed by Harmony Investments (an RIA which Capital L had acquired in March 2010). As they got closer to the March 31, 2010 deadline to file Aegis's Form ADV, Mr. Osunkwo refused to yield to repeated requests for Aegis to include Harmony's assets if all the required steps had not yet been met. Specifically, these communications are reflected and documented in email communications, including inter alia that on:

- March 8, 2010 Strategic Consulting transmitted draft Form ADV Parts I and II to Lamm for her review, listing her as signatory and advising her explicitly that she was being added as signatory to the ADV; This stands in stark contrast to Lamm's incredible testimony in which she stated that she was "shocked" to discover her name on the Form ADV and otherwise denied being involved in preparing the ADV or providing the numbers. [Transcript Lamm, pp. 122-136];
- March 12, 2010 Strategic Consulting emails Lamm regarding draft ADV Part I for filing March 2010 and inquires regarding open items for Lamm to complete including the AUM figure and number of accounts (ADV-1/Item 5f), and noting as of November 2009 AUM was listed as \$100MM and providing copy of ADV instructions for Item 5F AUM Calculation (with Strategic Consulting's highlighting as to same to bring to her attention);
- March 14, 2010 Osunkwo sends reply email to Lamm, Lakian and Brian Church (National Sales Director) regarding ADV annual updating and notes importance of using "utmost caution" in such ADV preparation and provides other ADV preparation background notes to assist them in providing information to Osunkwo;
- March 17, 2010 Lamm emails Osunkwo regarding ADV and indicates administration manager (G. Freeman) is "working on our numbers"; Although not attached to an email, in 2011, Aegis produces a spreadsheet that appears to be from Ginger Freeman that is titled "Aegis Cap Master AUM Spreadsheet 031010" showing AUM of \$165,544,548". This was likely preliminary numbers for the March 31, 2010 filing on which Ms. Freeman is working and which Lamm provided;
- March 17, 2010 – March 30, 2010 Lamm and Osunkwo exchange emails regarding imminent

acquisition of another RIA firm (Harmony Investments) in which she requests that Osunkwo include Harmony in the AUM calculation and in which Osunkwo repeatedly explains that unless acquisition is closed on or before March 31, 2010 and sufficient client consents are received, it cannot be included in filing on that date but could be done in subsequent amended filing; This further reinforces that Lamm was actively involved in AUM calculation and that Osunkwo understands how to calculate AUM in response to specific questions and appropriately advised against overstatement of certain assets;

- March 19, 2010, during office visit, Lamm provides Osunkwo with post-it note attached to an ADV draft dated of same date providing AUM as “\$164,94,972.00”, clients as “330”, number of accounts as “1540” and instructs to “throw in ADV send ASAP dwlamm@bellsouth.net” (Exhibit H);
- March 31, 2010, Osunkwo exchange frequent emails and telephone calls regarding finalization of AUM numbers for ADV including as follows:
 - o Osunkwo emails Lamm to confirm the AUM “prior to the Harmony closing” as “164,994,972.00” [based on post-it note she previously provided] and states that “I want to be sure we have a number that has been verified and can be supported. Could you please provide me with the final AUM to be reported for our ADV”;
 - o Osunkwo emails Lamm asking her to confirm the approximately \$165M in total AUM figure and reminding her again that Harmony’s AUM cannot be added into Aegis’ Cap total AUM in the ADV update under ADV rules and provides explanation regarding client consents not having been received regardless of close;
 - o Lamm replies to Osunkwo regarding ADV and indicates “Great Thanks!”;
 - o Based on Lamm’s approval/signoff, Strategic Consulting files the ADV-Part 1 Annual Update with the SEC showing total AUM of \$164,994,972 in Item 5F and listing Lamm as “e-signatory and primary firm contact”.

Thus, as reflected above, Lamm was in control of the AUM calculation process for Aegis’ March 2010 filing and Osunkwo relied upon her for that purpose. Indeed, Lamm, as COO and head of finance for the firm, had presented herself as singularly knowledgeable in finance matters and responsible for Aegis’ financial operations. As she testified, she had a deep background in finance, audit and regulated industries and had personally conducted the financial due diligence on Aegis prior to its acquisition by herself and Lakian, including verification of Aegis’ AUM in 2009. [Lamm Testimony at pp. 78-79] She had also served as interim-CCO before Osunkwo joined. Further, Osunkwo and Strategic Consulting had given repeated instructions to Aegis’ management including both Lamm and Lakian so that if they had any question or confusion regarding how to properly calculate the AUM, they were given every opportunity to engage in discussion with Osunkwo prior to and even on March 31, 2010 to do so. They never did. Lamm’s questions concerned only the addition of another RIA’s AUM, Harmony, and did not at any time raise issues as to the assumptions underlying Aegis’ AUM Osunkwo discovered in August and September 2011. In short, there were no red flags to Osunkwo that Aegis (or Lamm) did not understand how to calculate its AUM. Thereafter, Osunkwo with the assistance of Strategic Consulting transitioned to

performing more routine compliance tasks and, as set forth below, at no time between March 2010 and March 2011 did issues surface indicating a material risk existed with regard to how Lamm had calculated the AUM for March 2010.

Throughout these communications, Osunkwo demonstrates that he is knowledgeable about the Form ADV requirements and refuses to relax the requirements to support the business goals of his new client Capital L/Aegis. Although Lamm had provided the "\$165 million" AUM number for Aegis, Osunkwo did not simply rest on her assertion as he was new to Aegis and was learning what controls they had in place. During a visit to the Charlotte office in March 2010, he also viewed the methodology Aegis used in calculating its AUM. He reviewed a spreadsheet titled Aegis Capital-Master AUM_31010 that identified each client, the client name, account number, custodian and/or fund where the assets were held. The spreadsheet is included in the Appendix. Even though Lamm and Mr. Church indicated some confusion regarding when the newly acquired Harmony Investment's assets could be aggregated with Aegis Capital, the spreadsheet provided reasonable assurance that Aegis had back up to support the calculation of the \$165 million in AUM

F. Osunkwo With Assistance from Strategic Consulting Attends To Compliance Functions and Complied With Rule 206(4)-7

As to the annual compliance review requirement starting in or about April 2010 following Aegis' filing of its Form ADV, Osunkwo contacted Lamm and Lakian, Aegis' Chairman, requesting that the parties schedule a series of biweekly or other periodic meetings so that the parties could identify various compliance issues to be addressed and begin implementing the compliance work function at Aegis. As part of this process, Lakian, Lamm and Osunkwo held several meetings during the first few months of the process, after which time Lakian and Lamm designated Eric Blau, Aegis's Principal and Chief Investment Officer, to serve as the direct contact person for Osunkwo and Strategic Consulting for coordinating the day-to-day work process and provision of information to Osunkwo. In addition, Osunkwo continued to provide advice on an on-going basis to Lakian and Lamm as compliance matters arose and with respect to questions he received from them in the ordinary course of work. Osunkwo reviewed and updated Aegis' compliance manual in March through April 2010 period. Osunkwo had also advised Aegis of the necessity for establishing a process for the preapproval of personal securities transactions and the receipt and review of personal and family account statements as part of the implementation of Aegis's Code of Ethics. Lakian determined that he in his capacity as Chairman of Aegis would take responsibility for the

review of all personal securities account information consistent with Aegis's supervision of this process. Also, Osunkwo, with Strategic Consulting's support, reviewed the then-existing Aegis Funds and reported to Blau, including regarding any external private fund sub-managers.

Shortly after the March 2010 Form ADV was filed and during the 2nd quarter of 2010, Ms. Lamm became involved in other projects and told the Compliance Consultants they should utilize Mr. Blau if she was unavailable. Increasingly thereafter, Ms. Lamm and Mr. Lakian continued to be more involved in other projects, including acquisition and operation of restaurant properties, 15 North Roadside Kitchens in Charlotte, NC and 17 North Roadside Kitchens in Mount Pleasant, SC; Mr. Blau began to assume more of the day-to-day responsibilities of supervising Mr. Osunkwo and providing assistance. Even though Mr. Blau had previously focused on the funds part of Capital L, in mid-2010 he had begun taking a larger operational, supervisory and executive role within Capital L. For example, Mr. Osunkwo told me that Mr. Blau was involved in and led the acquisition and continuing membership application submission in October 2010 and approval by FINRA of Capital L's acquisition new broker-dealer affiliate of TAG Securities, Inc. ("TAG"), a broker-dealer acquired by Capital L in 2010. By January 2011, Mr. Blau was executing documents as President of TAG (as evidenced by a sub-clearing agreement) and on or about March 10, 2011, Mr. Osunkwo accompanied Mr. Blau (who attended as President and CEO of TAG) and Abel Garcia (who was the CCO of TAG) to FINRA's Dallas office for the Membership Meeting (a formal part of FINRA's regulatory review and approval process). The emails between Mr. Osunkwo and Mr. Blau in August and September 2010 demonstrate regular communications about compliance and disclosure issues relating to different aspects of Capital L's business – including Mr. Blau's expressed acknowledgement that the Compliance Consultants were putting in long hours in their efforts on behalf of Capital L and its affiliates and that they were in very regular contact. Of particular significance with respect to the issues in this administrative proceeding, Mr. Blau was involved in the operational and regulatory aspects of Capital L's integration of Circle One as early as September 2010. In an email exchange between Capital L Chairman/CEO Lakian, CEO and Mr. Blau on September 7, 2010 regarding combining the compliance and operations of Circle One and Aegis, Mr. Blau assumed responsibility for getting involved with the public disclosures of these now affiliate RIAs owned by Capital L.

Beginning in or about November 2010, Osunkwo worked with Aegis and Blau to conduct a mock audit for the review of Aegis's overall compliance and risk management infrastructure as well as to

conduct training of personnel. (See Osunkwo's email to Blau dated November 29, 2010.) Thus, for example, on November 8, 2010 Osunkwo conducted in-office training in the Charleston branch office including code of ethics and compliance policies, including marketing and distribution services and services and use of the internet. Thereafter, he initiated the mock audit, which process was intended to focus on the review of key potential risk areas of Aegis' business was primarily keyed off of deficiencies identified by the SEC in its examination of Aegis in 2009. The SEC's July 2009 deficiency letter had not identified deficiencies with respect to Aegis's understanding or calculation of AUM. The mock review was also designed to serve as a basis for completing Aegis's annual compliance review for 2010. Given the nature of Aegis' business which was primarily focused on private fund management as well as areas of deficiency identified by the SEC, the targeted areas identified for review with Aegis included Aegis' marketing materials, firm website, and fund offering documents. In preparation for the mock audit, Osunkwo provided to Blau a sample request letter from the SEC's Atlanta Regional Office providing guidance regarding information that the SEC would typically request from registrants for purposes of an SEC examination. In addition, Osunkwo undertook a review of Aegis' standard investment management agreement and solicitation agreement as well as disclosure statements, and advised on potential revisions to the same.

As Aegis was an existing investment adviser prior to Osunkwo's arrival in March 2010, Aegis had been independently preparing and reporting its assets under management and other pieces of information as part of its annual update of Form ADV. The then most current ADV dated as November 4, 2009, predating Osunkwo's arrival, indicated that Aegis's AUM was over \$100MM as of that date. At no time did Aegis indicate to Osunkwo that it had any misunderstanding as to the criteria for calculating its AUM or that it did not know how to calculate the same, such that Osunkwo would have cause to know that the manner in which Aegis had calculated its assets under management presented a risk issue for further evaluation. To the contrary, Lamm and Aegis management displayed to Osunkwo a thorough understanding of the process for collecting and calculating the registrant's AUM for purposes of reporting same on the Form ADV. For this reason, Osunkwo relied on the AUM and other account number information that he was given by Lamm, Aegis's Chief Operating Officer or Chief Investment Officer who informed Osunkwo and Lamm has testified that she personally verified Aegis's AUM and matched the numbers with custodian records as part of her handling of the due diligence that preceded her and Lakian's purchase of the controlling interest of Aegis in 2009.

G. Aegis Completes Acquisition of Circle One Prior to March 2011; Aegis/Circle One Form ADV Filing

To understand the basis for the March 2011 Form ADV filed on behalf of Circle One, it is important to understand the transaction between Aegis and Circle One that culminates in the combined Aegis / Circle One AUM figure for that ADV. In August 2010, Blau informs Osunkwo that Capital L has decided to acquire Circle One and Blau provides an acquisition term sheet to Osunkwo. Further thereto, on September 7, 2010, Lakian emails Capital L – Aegis staff announcing that Capital L is acquiring Circle One and that Blau and Lakian will coordinate with Les Robertson (Director of Operations) on all “RIA paperwork.” On September 27, 2010, Capital L – Aegis acquires Circle One. Thereafter, Circle One and Aegis undertake integration steps such that Circle One would assume investment management responsibilities for Aegis’ investment advisory relationships prior to year-end 2010. In January 2011, Blau confers with Osunkwo about discontinuing Aegis’ registration and that Aegis’ 2010 AUM should be included in the Circle One ADV to be filed in March 2011, and Osunkwo and Blau began communicating about the filing of the 2011 Form ADV for Circle One. A conference call and other meetings were held between Blau, Lamm, Osunkwo, Wigfall to discuss the integration of Circle One and Aegis as required by the management. (See 1/18/11 emails between Blau and Osunkwo). This discussion was followed by series of instructions from Blau leading to a telephone conference on January 20, 2011 among Blau, Capital L Chairman/CEO Lakian, Osunkwo, and Strategic Consulting during which time they discussed the harmonization of the Capital L Group registered investment advisers Circle One and Aegis by merging the business of Aegis into Circle One. (See 1/20/11 email exchanges between Blau, Osunkwo, Lakian and Strategic Consulting to discuss the transfer of Aegis Capital’s investment management business to Circle One and the deregistering of Aegis Capital). This conversation culminated in the direction to Osunkwo to file one Form ADV for Circle One because Capital L had decided that Circle One would assume Aegis’ advisory business and be the surviving entity and Aegis to be deregistered

Then, beginning on March 1, 2011, in connection with executing a Compliance Engagement Extension with Strategic Consulting and Osunkwo, Blau directs Osunkwo and Strategic Consulting to prepare the Form ADV for the merged Circle One and Aegis Capital and to undertake steps to de-register Aegis Capital as a standalone RIA; Blau pledges his help to get a revamped ADV done “quickly and accurately” for the new Circle One. Between March 1, 2011 through the filing of the

Circle One ADV in early April 2011, Blau manages the process of collecting information to provide to Osunkwo and Strategic Consulting so that they can prepare the Form ADV for Circle One. For example, on or about March 21, in response to Blau's request stating that "[o]ur compliance officer is working on [Circle One's] Form ADV filings which are due in a week", Osunkwo receives documents from Capital L Group's outside counsel (Cohen Gresser Law Firm) reflecting the closing of acquisition between Capital L and Circle One in September 2010, and then on March 23, 2011, Blau emails Peter Roe (a principal of Circle One) to request Circle One operating documents to assist Osunkwo in preparing the Form ADV. (See 3/21/11 and 3/23/11 emails between Blau, Roe and Osunkwo). Mr. Blau also told others at Capital L and New Circle One that he was actively working on the Form ADV to meet the March 31 deadline. In handling the integration further, Blau also reminds Circle One's principal Roe that they are creating a single RIA under the Circle One name through the upcoming March 31, 2011 ADV filing.

H. Blau Provides Osunkwo with the Figures for Circle One's 2011 ADV Filing For Which Blau is the Listed E-Signatory and Osunkwo's Direct Report and Supervisor

Owing to issues concerning the integration between Circle One and Aegis, Circle One's 2011 Form ADV had to be filed on Monday, April 4, 2011 because Circle One's IARD account was insufficient to file the consolidated Form ADV on March 31, 2011 so that it had to wait until additional funds were funded in its IARD account through firm management in order to complete its filing. Prior thereto on March 31, 2011, despite repeated requests for the accurate AUM and after several prior phone calls between Blau and Osunkwo regarding the information needed for the Circle One ADV filing, Blau first provides figures for the combined AUM of Aegis and Circle One as of December 31, 2010 in an email to Osunkwo, as follows:

Funds: \$36,800,000

Schwab/Fidelity: \$96,092,701 (1,179 accounts) (not sure how many customers)

Circle One: probably higher than \$50m, but hopefully Frank told you a number today

Total is in the \$182.89m range.

In assisting Osunkwo and Blau in finalizing ADV, Strategic Consulting requested from Osunkwo remaining ADV items of information to be confirmed in completing the final draft of filing, and Osunkwo then responds that he has spoken with Blau and confirmed those final remaining open items of information that were needed, including who is to be listed as the firm contact and that the main office address in Charlotte NC (where Blau was based) would remain the primary office address for the merged-consolidated Circle One and Aegis. On Friday, April 1, 2011, Mr. Blau and Strategic Consulting exchanged a number of emails (in Osunkwo's absence) in which Mr. Blau

repeatedly sought to determine and confirm that Circle One's Form ADV had been properly filed and repeatedly asked to be updated that the ADV had been filed. Given Blau's prior direction and commitment to help get the new and reorganized Circle One Form ADV filed quickly and accurately and his repeated indications along with Lamm to get this ADV on file, Strategic Consulting filed the combined ADV-1 for consolidated Circle One and Aegis RIAs with the SEC under the Circle One Name and its IARD account listing a total AUM of \$182 million as provided by Blau.

Blau never raised any concerns, questions or discrepancies in any of the Circle One Form ADV items listed in its 2 parts regarding firm AUM, number of accounts, or Blau's senior officer/management, board of director, and "control person" roles as reflected in such Form ADV as provided to Blau during the week of this ADV filing in the period April 1-6, 2011. In early April and afterwards, Blau's responses to Osunkwo/Strategic Consulting, on behalf of senior management of Capital L and merged-consolidated Circle One and Aegis Capital RIA firms, to these Osunkwo/Strategic Consulting's email exchanges, communications and related materials was in sum and substance: Thank you and job well done as we agreed beforehand. At no time during this first week of April 2011 upon being provided with copies of the updated Circle One March 2011 Form ADV or afterwards up until the SEC's routine examination in August-September of 2011, did Blau inform Osunkwo or Strategic Consulting of any mistakes, inaccuracies or overstatements in any of the information in such Form ADV regarding AUM and number of accounts as provided by Blau, nor did Blau raise any questions, issues or inaccuracies with his various management, officer, control person and director roles as listed in this Form ADV in both parts.

III. LEGAL ANALYSIS & ARGUMENTS

A. An Investment Adviser Firm's Management and Senior Executives Are Clearly Responsible For Supervision And Compliance By Their Firm With The Securities Laws, Including The Filing Of Accurate Form ADVs, Not A Compliance Officer Who Administers Policies And Procedures As Opposed To Supervising The Firm

As a predicate matter, a chief compliance officer is not a supervisor for or legally responsible for a firm's business operations or compliance with the law by virtue of having the title of chief compliance officer. See *SEC-Division of Trading and Markets, Frequently Asked Questions about Liability of Compliance and Legal Personnel at Broker-Dealers under Sections 15b(4) and 15b(6) of the Exchange Act* (Sep. 30, 2013; Available at <https://www.sec.gov/divisions/marketreg/faq-cco-supervision-093013.htm>), p. 2-3 ("CCO FAQ") (instructing same and that compliance personnel do not become supervisors by providing advice or counsel); 17 C.F.R. § 275.206(4)-7(c) (providing that a chief compliance officer is a supervised individual responsible for administering policies and procedures adopted by an advisor, not supervising them). Rather, responsibility for compliance resides with a firm's chief executive officer and its senior management or executive officers who actually operate and supervise the firm's business. CCO FAQ, p. 2. This includes with respect to providing and verifying the accuracy of information a firm includes in its Form ADV. See *SEC v. Moran*, 922 F.Supp. 867, 900 (S.D.N.Y. 1996) (firm's president willfully aided and abetted firm's failure to file proper Forms ADV and BD because he had an obligation to ensure that the firm filed current, accurate and complete Forms, including of material information which the evidence indicated was or must have been known to him, which obligation included a duty by president to make reasonable inquiry to ensure that the information was correct). This is particularly true for senior executives who sign the firm's filing, thereby certifying that the information contained in the Form is accurate and complete. *Id.* (instructing same and rejecting president's explanation that he made an oversight). Consistent with the foregoing, advisory firm personnel may not interfere with a compliance officer's work by providing false or inaccurate information or certifications, nor is a compliance officer required to assume that such persons are withholding or providing inaccurate information. See, e.g., *In the Matter of Carl D. Johns*, SEC Rel. No. 3655, 2013 WL 4521777 (Aug. 27, 2013) (sanctioning portfolio manager for inter alia filing false certifications and failing to disclose personal trading activity to and thereby interfering with compliance officer's review). As such, there is no basis under the law for shifting Aegis' senior management responsibility for ensuring and verifying the accuracy of the information they provided for inclusion in the firm's Forms ADV, which information was within their knowledge and control based on their actual operation of Aegis'

advisory business, to Osunkwo or Strategic Consulting.

B. There Is No Basis For Asserting Claims Against Mr. Osunkwo In His Capacity As Chief Compliance Officer For Violations Of Advisors Act Sections 207, 204 Or Other Provisions Of The Advisors Act Cited By The SEC

Consistent with the foregoing, it is remarkably uncommon to hold a chief compliance officer liable for a violation of section 207 or 204 where, as here, the compliance officer was not a principal of the advisor and did not knowingly or actively participate in the underlying violation—here, the erroneous miscalculations of the firm’s AUM and number of accounts by its management and senior executives. See *In the Matter of J.S. Oliver Capital Mgmt., L.P., Ian O. Mausner, and Douglas Drennan*, Release No. 649 (2014) (holding the firm’s co-founder, “chief executive officer, portfolio manager, and ultimate decision maker during the time at issue” and compliance officer directly liable for a 207 violation); Compare with *In the Matter of Shelton Fin. Grp., Inc. & Jeffrey Shelton, Respondents.*, Release No. 3993 (Jan. 13, 2015) (only charging the CEO, and not the CCO who relied on prior statements by the CEO, with a violation of section 207). Here, the chief compliance office relationship with the advisor is not one of control over the entity, so the liability of the investment advisor cannot be imputed on the compliance officer. See *In the Matter of Warwick Capital Mgmt., Inc., and: Carl Lawrence*, Release No. 327 (Feb. 15, 2007) (“An associated person may be charged as a primary violator, where, as here, the investment adviser is an alter ego of the associated person.”); see also *In the Matter of Montford and Co., Inc. d/b/a Montford Associates, and Ernest V. Montford, Sr.*, Release No. 457 (2012) (“As 100 percent owner, president, chief executive officer, and chief compliance officer, Montford has always controlled Montford Associates, and his actions can be attributed to the investment advisor.”).

C. There Is No Basis For Asserting A Claim That Osunkwo Or Strategic Consulting Aided And Abetted Aegis’ or Circle One’s Filing Of Form ADVs With Inaccurate AUM As They Neither Knew That Aegis or Circle One Miscalculated Its AUM or Number of Accounts, Nor Were There Any Red Flags That Would Have Put Them On Notice Of The Same

Moreover, there is no basis for finding that Osunkwo or Strategic Consulting aided and abetted Aegis’ or Circle One’s filing of inaccurate information in their Form ADVs. For the Commission to be able to establish a claim for aiding and abetting liability it would be required to demonstrate: (1) a primary or independent securities law violation by an independent violator; (2) Osunkwo’s and/or Strategic Consulting’s knowing and substantial assistance to the primary violator; and (3) their awareness or knowledge that their role was part of an activity that was improper. *SEC v. Slocum*,

Gordon, & Co., 334 F.Supp.2d 144, 184-85 (D.R.I. 2004). To sustain such a claim, there would have to be sufficient evidence to establish conscious involvement in impropriety, which is demonstrated by proof that the alleged aider and abettor had general awareness that his role was part of an overall activity that was improper. *Id.* Awareness of wrongdoing means knowledge of wrongdoing. *Howard v. SEC*, 376 F.3d 1136, 1142-43 (D.C. Cir. 2004). As set forth above, there is no evidence that Osunkwo or Strategic Consulting knew that Aegis, Lamm and Blau had inaccurately calculated Aegis' or Circle One's AUM or had provided inaccurate information. See, e.g., *Slocum, Gordon*, 334 F.Supp.2d at 184-85 (adviser's portfolio managers, including portfolio manager also responsible for compliance and updating and filing the firm's Form ADV, were not aware that the firm's bank account structure allowing for co-mingling of client and firm assets was improper under the Advisers Act, and thus they did not have the mental state to aid and abet the firm's failure to disclose this conflict of interest in its Form ADV). As such, the SEC's case for aiding and abetting would require the Commission to establish scienter by way of recklessness. *Howard*, 376 F.3d at 1142-43. Inexcusable neglect or negligence is insufficient. *Id.* (instructing same and that aiding and abetting requires more than a person should have known he was assisting violations of the securities laws). Moreover, to sustain a claim, a person's recklessness would have to be "extreme" or "severe", which would exist if the accused (i) encountered "red flags", (ii) suspicious events creating reasons for doubt that should have alerted him to the improper conduct of the primary violator, or (iii) if there was a danger so obvious that the actor must have been aware of the danger. *Id.* As set forth above, no such red flags, suspicious events, or obvious dangers existed here. Rather, Lamm and Blau were high level Circle One executives engaged in the direct operation of Circle One's business, who knew or should have known based on their operation of the business how much money Circle One was actually managing for clients. There was no indication that they had provided inaccurate information, there was a problem with the firm's AUM, or that they did not know how to calculate AUM. Lamm and Blau signed the respective 2010 and 2011 Forms ADV certifying that the information contained therein which they had provided to Osunkwo and Strategic Consulting was accurate. Lamm also advised Osunkwo that she had personally verified the firm's AUM as part of the Aegis' acquisition process before Osunkwo began to work with Aegis. Indeed, not even the SEC's 2009 deficiency findings for Aegis, which were extensive in nature, identified the firm's reporting of AUM as a problem area for the firm such that it would have generated a red flag for further review. See, e.g., *Slocum, Gordon*, 334 F.Supp.2d at 184-85 (finding portfolio managers did not aid and abet firm's filing of inaccurate Form ADV related to its bank account structure as the firm had been subject to external reviews including by the SEC which did not

identify the firm's account structure as a problem). Moreover, as soon as issues came to light in late 2011 that Circle One may have miscalculated its AUM, Osunkwo assisted by Strategic Consulting immediately investigated and worked with the firm to correct the matter and advised the SEC accordingly. *Id.* (no scienter for aiding and abetting where defendants were not aware that firm's account structure was improper but took steps to remedy the problem as soon as it came to light). As such, there is no basis for asserting, nor would the Commission be able to sustain a claim for aiding and abetting. At best, all the Commission could assert is that Osunkwo and/or Strategic Consulting aided and abetted Circle One's filing of an inaccurate Form ADV by failing to reveal what they purportedly should have found out, but did not. Such a claim would, "At best ... amount[] to a finding of negligence; at worst it is liability without fault." Howard, 376 F.3d at 1149 (instructing same and reversing sanctions by SEC where broker did not know and there were no obvious red flags that firm's private offering did not comply with certain provisions of the Exchange Act).

D. Similarly, There Is No Basis For Asserting A Claim That Osunkwo Or Strategic Consulting Caused Circle One or Aegis To File Form ADVs With Inaccurate AUM or Number of Accounts Information

In addition, there is no basis for finding that Osunkwo and/or Strategic Consulting caused Circle One's or Aegis' filing of inaccurate information in their Form ADVs with respect to the firm's AUM. For the Commission to be able to establish a claim for causing Circle One or Aegis to make an inaccurate filing and thereby violate the Advisors Act, the Commission would be required to demonstrate: (1) a primary violation; (2) an act or omission by Osunkwo or Strategic Consulting that was a cause of the violation; and (3) they knew, or should have known, that their conduct would contribute to the violation. In the Matter of Brandt, Kelly & Simmons, LLC, SEC Rel. No. 289, 2005 WL 1584978, at *6-7 (June 30, 2005). A person who aids and abets a violation is also a cause of the violation. *Id.* Negligence is sufficient to establish liability for causing a primary violation that does not require scienter, whereas it is assumed that scienter is required to establish secondary liability for causing a primary violation that requires scienter. *Id.* As set forth above, there are no grounds for finding that Osunkwo or Strategic Consulting acted with scienter or aided and abetted Circle One's or Aegis' violations based on Aegis' filing of inaccurate information in its Forms ADV. **Moreover, the duty for ensuring an advisor's supervision and compliance with the law, including for the accuracy of its Form ADV and verification of the same, rests with the firm's chief executive officer and/or firm management, not a compliance officer let alone**

an outside compliance consultant. In fact, the Commission and its Investment Management Division in its prior guide to IARD E-Filings and usage of regulatory and compliance consultant “filing service bureaus” – which consist of regulatory-compliance consultants, consulting firms and law firms – expressly notes the following as a reminder and disclaimer for investment advisers that use such “compliance and regulatory service bureaus”:

Remember: Electing to use a service bureau does not relieve an investment adviser of its legal and regulatory responsibilities under the federal securities laws, including the timely submission of complete and accurate filings.

(SEC-Division of Investment Management, *Electronic Filing for Investment Advisers on IARD – List of Service Bureaus for IARD Filings*, available at www.sec.gov/divisions/investment/iard.shtml as of Dec. 2008 (last viewed))

Finally, there were no red flags, suspicious events or other obvious dangers that would have alerted Osunkwo and/or Strategic Consulting that Circle One or Aegis had provided inaccurate information or that its senior executives Lamm and Blau who were engaged in the direct operation of the business and who knew or should have known how much money Circle One or Aegis was actually managing, would provide inaccurate information such that the information they provided and verified could not be trusted. Indeed, Strategic Consulting provided Lamm with the instructions for Form ADV to assist the firm in preparing information for inclusion in the March 2010 ADV, Lamm stated to Osunkwo that she had personally verified Aegis’ AUM as part of the acquisition of the firm, and both Lamm and Blau approved and signed-off on the respective March 2010 and 2011 Form ADV’s verifying their accuracy. In short, there is no basis for asserting that Osunkwo or Strategic Consulting acted intentionally or negligently as a matter of law, or that either were the cause of Circle One’s or Aegis’ failure to provide accurate information for its Form ADV’s.

E. The Testimony and Email Among Circle One’s and Aegis’ Chief Investment Officer, Operations Director and Osunkwo Will Show and Reinforce that Osunkwo Reasonably Relied on Information Provided to Him for the Circle One AUM and Number of Accounts Calculations for Circle One’s 2010 Form ADV Annual Update filed in March/April 2011

The extent of Blau’s responsibility for obtaining the combined Circle One and Aegis AUM figures as well as the process he used in obtaining that information was extensive and clear. Together, this information will illustrate that Osunkwo and Strategic Consulting were reasonable in relying upon Blau, who in turn relied upon the Operations Director Robertson, to provide him with the information that Blau gave to Osunkwo and Strategic Consulting. Also Blau was Chief Investment Officer and portfolio manager of the entire private funds portfolio of Aegis and its corporate parent

Capital L, which consisted of multiple private, hedge and alternative funds, and in this capacity, he was responsible for managing and overseeing all the assets and holdings of the private funds and performed due diligence on prospective and existing private fund investments and all sub-managers. Blau also was the primary contact with Aegis' and Capital L's fund administrators for the private funds as well as valuing the assets of the underlying funds in which the private funds were invested. Moreover, it was not until months after filing the 2010 Circle One Form ADV in the March/April 2011 timeframe, including the AUM figures provided by Blau and Robertson to Osunkwo, that Robertson testified that he learned of errors in the calculation of the AUM figures. In combination, therefore, Osunkwo/Strategic Consulting was not aware of concerns with regard to the AUM figures provided to him by Blau or Robertson at the time of the 2010 Circle One Form ADV filing in early 2011. According to the Division's investigative testimony taken from Blau (in his capacity as Chief Investment Officer of Circle One and Aegis Capital RIAs) and Robertson (as Operations Director), they were both integrally involved in obtaining the AUM figures used in the Circle One 2010 annual ADV filing that Blau provided to Osunkwo. More specifically:

- Blau testified, in clarifying his role with respect to the preparation of Circle One Wealth Management's ADV dated March 31, 2011, that he relied on Robertson, as Operations Director to obtain the AUM and other information which he provided to Osunkwo during the preparation of the Form ADV [Blau 10/18/11 Testimony pp. 189-205];
- Robertson testified that although his background was originally in the insurance industry, since joining Capital L on Feb 1, 2010, he has been schooled in the regulatory issues pertaining to the operation of a registered investment adviser; and can distinguish between the commissions-based practice of a broker-dealer and the fee-based practice of a registered investment adviser [Robertson Testimony 3/8/12 pp. 10-12, 25-29, 45-55];
- Robertson stated that he interacted with Osunkwo by phone and email at least weekly [Robertson Testimony pp. 74-81];
- Blau further testified that it was in connection with the SEC's subsequent exam of Circle One and Aegis Capital that Robertson first informed him that Operations learned from Fidelity that as a result of an Advent software "backfeed" error, there was a \$20-22 million" of overstatement in the AUM number that Operations gave Blau back in March of 2011, which Blau had provided to Osunkwo for inclusion in the ADV [Blau Testimony pp. 189-205];
- Blau also testified that he did not notify Osunkwo of this error at the time Operations / Robertson first notified him of the error in the AUM calculation [Id.]; and
- Robertson testified consistently with Blau's testimony that he had been the one that provided the incorrect account value from Fidelity to Blau as part of the preparation of the ADV, which he later learned was attributable to a systems error with Advent software [Robertson Testimony pp. 96-100].

In sum, the Division's testimony from Robertson and Blau, as well as these supporting documents and exhibits, reinforce that Osunkwo and Strategic Consulting received AUM figures for the Circle One 2010 ADV filing from Blau, who in turn obtained them from Capital L/Aegis' Operations Director Robertson and Circle One's principal Roe. At that time, there was no information or evidence to suggest that either Aegis or Circle One for 2009 or 2010, respectively, had improperly calculated their AUM so as to cause Osunkwo to disregard these figures much less countermand Blau, Robertson and others in preparing the 2010 Form ADV for Circle One. On the basis of the above, therefore, Osunkwo prepared the 2010 Form ADV for Circle One using the information he was given by Blau in the context of Blau and Lamm providing their approval and sign-off. Indeed, as Robertson testified, he did not know of deficiencies affecting Aegis' figures until long after the Circle One 2010 ADV had been filed, so that Osunkwo would not have known nor is there any evidence that Osunkwo reasonably should have known.

F. Aegis Had No Obligation to File a Form ADV Pursuant to Rule 204-1(a)(1) Once Circle One Claimed All its Assets In Connection with the Acquisition and Subsequent Internal Merger-Consolidation Reorganization into Circle One, But Rather Was Required to File a Form ADV-W Which Circle One / Aegis Management Repeatedly Delayed Filing Despite Osunkwo Having Prepared it and Directing Them To Do So

Capital L Group, the holding company of Aegis, completed its acquisition of Circle One in September 2010. Between September 2010 and March 2011, the principals of Capital L and Aegis evaluated how best to integrate Aegis and Circle One and ultimately it was determined that Circle One would be the surviving RIA, combining the assets of Aegis with its own. The rationale was mainly twofold: get past the negative legacy issues associated with the former owners/operators of Aegis Capital, Alan Darby and Wes Norton, et al, and second, overcome the branding conflict with another investment and financial services firm named "Aegis Capital Corp" which had threatened a cease and desist action that necessitated the rebranding and name change to Capital L Group, LLC. Thus, in contemplation of filing the 2010 Circle One Form ADV in March 2011, Osunkwo and Strategic Consulting discussed with Blau, Lamm and Lakian the need to file a Form ADV-W for Aegis, thereby withdrawing the registration of Aegis. This was based on interpretive guidance from the SEC dated December 28, 1992, which made clear that where two registered investment advisers combined, only the investment adviser continuing to operate needed to file an ADV. Specifically, the SEC had stated:

Because the successor rules are intended to allow an unregistered successor to rely on the registration of its predecessor for a limited period of time, they do not apply to reorganizations that involve only registered entities. In those situations, the registered

entities need not use the successor rules because they can continue to rely on their existing registrations. For instance, if two registered broker-dealers merge, the surviving broker-dealer would file an amendment to its Form BD, while the acquired broker-dealer would file to withdraw its registration on Form BDW.¹⁶ Furthermore, if a person or entity acquires some or all of the shares of a registered adviser, or if one registered adviser purchases or otherwise assumes part or all of the business assets or personnel of another registered adviser, there would be no need to rely on the successor provisions.¹⁷

[Ft. Note 17: In the case of the purchase of the business assets or personnel of one registered adviser by another, the purchasing adviser would file an amendment to Form ADV [17 CFR 279.1] to reflect any changes in its operations, while the other adviser would file either Form ADV-W [17 CFR 279.3] or an amendment to its Form ADV, depending on whether it remained in the advisory business.]

See Appendix of Exhibits and Exhibit No. 13 (attaching “Registration of Successors to Broker-Dealers and Investment Advisers,” Rel. no. 34-31661 (Dec. 28, 1992) (adopting rule amendments to Exchange Act and providing interpretive guidance to investment advisers). In so far as Circle One would be the “surviving adviser” with the combined assets, it filed an amendment to its ADV to reflect the change in its operations, AUM and management team as set forth in the 2010 Circle One Form ADV filed March 2011 including Aegis’ business and AUM as of March 31, 2011. As for Aegis, the SEC’s guidance indicated that Aegis would file either an ADV-W if it was not continuing its business or an amendment to its ADV dependent upon whether Aegis “remained in the advisory business” or “ceased doing advisory business.” Based on the various communications with Blau and other Capital L management, including Lakian and Lamm, Osunkwo and Strategic Consulting understood that Capital L had acquired Circle One and that Aegis’ advisory business had been assumed by Circle One and would no longer operate any advisory business so that no Aegis Form ADV was required as of March 31, 2011. This explains the repeated references in the email and other communications between Osunkwo and Blau about “de-registration” of Aegis. See Appendix of Exhibits and Exhibits Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 (collectively explaining Form ADV was to be filed for Circle One, not Aegis, and that Aegis would be de-registered). Thus, after filing the 2010 Circle One Form ADV, Osunkwo circulated Circle One’s ADV-2 Brochure to Circle One personnel for the newly combined entity and advises everyone to no longer use Aegis’ ADV documents. See Appendix of Exhibits and Exhibit No. 14 (4/6/11 email exchange among Osunkwo, Robertson, Blau and others, to which Blau responded, “Thank you, David (Osunkwo)”). At the end of April 2011, Lamm as the firm’s IARD principal representative, received an IARD delinquency notification regarding the filing of Aegis’ Form ADV, which she forwarded to Osunkwo. See Appendix of Exhibits and Exhibit No. 15. Osunkwo notes plan for filing Aegis’s ADV-W to

withdraw its registration the following week as soon as Capital L counsel would give their clearance based upon the existence of litigation with a former Aegis (now Circle One) adviser who left taking approximately \$60MM in AUM. Thereafter, repeated discussion took place between Strategic Consulting, Osunkwo and the management of the firm about the timing of filing the ADV-W, but which they balked at filing. Thus, for example, between May and June 2011, Osunkwo and Strategic Consulting prepared a draft Form ADV-W which was eventually uploaded to the IARD online system as a pending draft (but not submitted) as of July 7, 2011 (see Exhibit No. 16) but Osunkwo could not and had no signatory authority to file this on his own. See Exhibit 19. Accordingly, in the ordinary course, Osunkwo has repeated conversations between May and December 2011 regarding the status of Aegis' ADV-W needing to be filed to which Management did not respond. See Exhibits Nos. 17-20. In December 2011, Capital L terminates Osunkwo prior to having filed the Aegis ADV-W. In sum, Aegis had no obligation to file a Form ADV for 2010 once its business was assumed by Circle One, but did have an obligation to file an ADV-W. Despite repeated reminders to Circle One, Capital L and Aegis management of the need to do so, and that Osunkwo and Strategic Consulting even prepared a filing for submission, firm management chose not to file or to delay filing Aegis' Form ADV-W.

IV. CONCLUSION

The underlying facts of this case do not support the claims by the Division against Osunkwo and Strategic Consulting. While the allegations of wrongdoing against Aegis and Circle One give rise to serious concerns, Osunkwo took on the engagement of CCO with adequate support and assistance from Strategic Consulting to fulfill the primary responsibilities of a CCO – to administer the firm's policies and procedures. The role of chief compliance officer is not and was not in this case that of an auditor that must verify and reconcile every assumption underlying the business nor can the Division shift the duties of senior officers, including the Chief Operating Officer and Chief Investment Officer, to the compliance officer to inform them of how to calculate AUM where, as here, the CCO is relying on them to provide him with the calculations of AUM and number of accounts since such firm executive officers have sole access to and control over such underlying firm internal information. In sum, there is no policy objective consistent with the SEC's Compliance Rule (Rule 206(4)-7) to be achieved by holding Osunkwo liable or responsible here for firm management's wrongdoing or lack of supervision, much less the possible sanctions sought by the Division in its claims.

Given the efforts undertaken by Osunkwo and Strategic Consulting to file properly the Form ADV for Aegis in March 2010 based on information from Aegis' principal and COO (Lamm), the same was true for purposes of the March 2011 Form ADV for Circle One: Osunkwo corresponded with and obtained information for the Circle One ADV from the CIO (Blau), to whom Osunkwo reported directly, and Blau obtained that information from the Operations Director of Aegis and principals of Circle One. To the extent Osunkwo had no knowledge of any errors in the calculations of either Aegis' or Circle One's AUM at that time, his reliance in the March 2011 time frame was no less reasonable. Nor given the SEC interpretive guidance did Aegis have an obligation to file a Form ADV for March 2011 (for 2010) in that Circle One had assumed Aegis' business. Aegis had only an obligation to file a Form ADV-W, which was not timely filed, but which Osunkwo repeatedly ensured that it was identified to, and prepared for, Aegis' management to submit. For whatever reason, Aegis and its holding company, Capital L chose not to file the Form ADV-W prior to Osunkwo's termination. As discussed in detail herein, the Division's theories of liability against Osunkwo and derivatively against Strategic Consulting do not warrant holding Osunkwo liable (much less Strategic Consulting) as Chief Compliance Officer for Circle One's and Aegis' firm management decisions and shortcomings.

This case is readily distinguishable from those in which it is appropriate to consider charging a compliance officer as the Director of the Division of Enforcement Andrew Ceresney stated in a 2014 speech:

But at the same time, I need to be clear that we have brought – and will continue to bring – actions against legal and compliance officers **when appropriate. This typically will occur when ... legal or compliance personnel have affirmatively participated in the misconduct, when they have helped mislead regulators, or when they have clear responsibility to implement compliance programs or policies and wholly failed to carry out that responsibility.**

(Keynote Address at Compliance Week 2014 (May 20, 2014); emphasis added)

The underlying facts and circumstance outlined herein do not meet this threshold, and the evidence at the hearing will bear this out.

Dated: July 18, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David I. Osunkwo", written in a cursive style. The signature is positioned above a horizontal line.

David I. Osunkwo

ADMINISTRATIVE PROCEEDING
File No.3-16463

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In the Matter of

AEGIS CAPITAL, LLC, CIRCLE ONE
WEALTH MANAGEMENT, LLC,
DIANE W. LAMM,
STRATEGIC CONSULTING
ADVISORS, LLC and
DAVID I. OSUNKWO

Respondents.

-----X

CERTIFICATE OF SERVICE

I, David Osunkwo, certify that on July 18, 2016, I caused true and correct copies of the attached Pre-Hearing Brief of David Osunkwo to be filed and served on the following as follows:

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